IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3776 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARIJAN KELVANI MANDAL

Versus

KISHANSINH SADABHAI SOLANKI

Appearance:

1. Special Civil Application No. 3776 of 1992

MR BS PATEL for Petitioner No. 1

MR JV BHAIRAVIA for Petitioner No. 2

MR SV PARMAR for Respondent No. 1-3

MS MANISHA LAVKUMAR, AGP, for Respondent No. 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 28/11/2002

ORAL JUDGEMENT

In this petition under Articles 226 and 227 of

the Constitution filed by Harijan Kelavni Mandal and its President challenges the order dated 20-3-1992 passed by the learned Joint Charity Commissioner, Ahmedabad in Judicial Misc. Application (Old) No.35 of 1987- (New) No.16 of 1990. The order is passed under Section 41A of the Bombay Public Trusts Act, 1950 (hereinafter referred to as "the Act") but the directions contained in the order go far beyond the scope of Section 41 of the Act.

2. The learned Joint Charity Commissioner has directed the trustees of the Harijan Kelavni Mandal to take out appropriate proceedings within three months from the date of the order, for obtaining permission in favour of Harijan Kelavni Mandal to manage and administer the Sayaji Vidhyarthi Ashram or a Scheme be framed for amalgamation of the two trusts. Till such orders are obtained or Scheme is framed, the trustees of Sayaji Vidhyarthi Ashram are directed to manage and administer the Sayaji Vidhyarthi Ashram as per the resolutions which may be passed by a majority of the trustees at their meetings. Certain other directions are also given by the impugned order.

3. When this petition came up for admission hearing, the following order was passed:-

"Rule. Heard the learned advocates for the parties. By way of interim relief the impugned order dated 20th March, 1992 Annexure `A' passed by the Joint Charity Commissioner under Sec. 41 of the Bombay Public Trusts Act, 1950, is stayed till further orders, because two trusts are separately registered under the Act and, therefore, no such direction, as given in the impugned order, can be given. However, it is clarified that it would be open to Respondent No.2 or any other interested person to move the Charity Commissioner for amalgamation of the trusts or framing of the Scheme in accordance with the provisions of the Act. It would also be open to them to file appropriate application, if permissible under the Act, for appointing Administrator of the Trusts."

sd/-
15.7.92 (M.B. Shah,J)

4. When the petition has reached final hearing today, Mr Bhairaviya learned counsel for the petitioners submits that the petitioners have no objection if the petition is disposed of in terms of the interim order. MR Bhairaviya further states that even though while

granting the interim stay dated 15-7-1992 this Court had reserved liberties to respondent No.2 or any other interested person to move the Charity Commissioner for amalgamation of the trusts or for framing the Scheme in accordance with the provisions of the Act or even to file appropriate application, if permissible under the Act, for appointing Administrator of the Trusts, no party has taken any such steps pursuant to any of the aforesaid liberties.

5. Mr SV Parmar for respondents No. 1 to 3 states that the said respondents have not approached him for the last about 10 years and he does not know whether the said respondents have approached any authority.

6. Ms Manisha Lavkumar learned Assistant Government Pleader appearing for respondent No.4- Joint Charity Commissioner submits that in view of the scope of the provisions of Section 41A of the Act, respondent No.4 also has no objection if the petition is disposed of in terms of the interim order.

7. In view of the aforesaid consensus, this petition is disposed of. The impugned order dated 20-3-1992 passed by the learned Joint Charity Commissioner, Ahmedabad is hereby set aside with a clarification that it would be open to respondents No.1 to 3 or any other interested person to move the learned Charity Commissioner for amalgamation of the two Trusts or for framing and sanctioning of a Scheme in accordance with the provisions of the Act. It would also be open to them to file appropriate application, if permissible under the Act, for appointing Administrator of the Trusts.

8. The petition is accordingly disposed of in terms of the aforesaid directions.
Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah,J)
zgs/-